



WASHINGTON STATE LIQUOR CONTROL BOARD

## **Notice of Rule Change**

### **Certificate of Approval Licensing**

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This explanatory statement concerns the **Washington State Liquor Control Board's adoption of changes to rules regarding who can bring beer and wine into Washington State for resale.**

The Administrative Procedure Act (RCW 34.05.325[6]) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Liquor Control Board will file the amended rules with the Office of the Code Reviser. The rule changes will become effective on January 1, 2005.

The Liquor Control Board appreciates your involvement in this rule making process. If you have any questions, please contact Teresa Berntsen, Rules Coordinator, at 360-664-1648 (or e-mail at [rules@liq.wa.gov](mailto:rules@liq.wa.gov)).

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### **What are the agency's reasons for revising these rules?**

These rule changes were adopted to implement Substitute Senate Bill 6655 (SSB), passed during the 2004 legislative session. The law change, which will take effect on January 1, 2005, will:

- Allow an authorized representative of an out-of-state brewery or winery to ship beer and wine into Washington State for resale. Currently only the actual manufacturer can do this.
- Require persons who ship foreign-produced beer or wine into Washington for resale to get a Certificate of Approval (COA) license, just like suppliers of U.S. product.

Rule changes were needed in order to:

- **Make technical changes** to several rules to reference the fact that an authorized representative can now receive a COA license.
- **Set the COA fee.** SSB 6655 gave the Liquor Control Board the authority to set the COA fee to cover the costs of administering the program. It is anticipated that, with this law change, the number of COA holders will more than double. The new rules change the COA fee from \$100 to \$200.

## Difference Between Rules Published and Rules Adopted

The attached adopted rule language contains the following technical changes from what was published by the Board:

- WAC 314-20-001, Page 4 and WAC 314-24-001, Page 8: A technical change to clarify that an authorized representative may receive a certificate of approval if he/she is the exclusive representative for the product either in the United States or the State of Washington. This change was requested by the proponents of the bill this rule making implements, the National Association of Beverage Importers. The bill defines what an authorized representative is, and says the person must be the exclusive representative for the product in the United States. This could cause confusion, as the intention of the bill was to allow an authorized representative to receive a certificate of approval if he/she is the exclusive representative for the product either in the United States or the State of Washington.
- WAC 314-20-140, pages 6-7: The way the rule is currently worded, it sounds as if both the importer and the brewer have to obtain a COA, which is not the case. Staff propose a technical change for clarity.

## Summary of all public comments received regarding the proposed rules, by subject matter. How do the final rules reflect the agency's consideration of these comments, or why does it fail to do so?

1. **Comment:** The National Association of Beverage Importers asked for a technical change to clarify a portion of the bill that the rule implements that could cause confusion. The bill defines what an authorized representative is, and says the person must be the exclusive representative for the product in the United States. The intention was to allow an authorized representative to receive a certificate of approval if he/she is the exclusive representative for the product either in the United States or the State of Washington. They are asking that the Board add this clarification to the proposed rules, and staff recommend making this change.

**Agency's response:** The agency made this clarification in the rules it adopted.

2. **Comment:** The way WAC 314-20-140 is worded, it sounds as if both the importer and the brewer have to obtain a certificate of approval.

**Agency's response:** The agency clarified this matter in the rules it adopted--only one of the parties must obtain a certificate of approval.

3. **Comment:** Raising the fee from \$100 to \$200 may be a lot for some small wineries.

**Agency's response:** SSB 6655 gave the Liquor Control Board the authority to set the COA fee to cover the costs of administering the program. With this law change, we anticipate that the number of certificate of approval holders will increase from 765 to an estimated 1,835. More than doubling the amount of these types of licensees will mean more costs to the Board in licensing, enforcement, and tax administration.

The agency believes it is unlikely small wineries will be affected by this fee increase, as they rarely hold certificate of approval licenses.

4. **Comment:** Several persons indicated they support allowing an authorized representative to hold a certificate of approval license.

**Agency's response:** This privilege will be allowed by the legislation that this rule making implements.

The following rule changes were adopted by the Liquor Control Board. Once all persons who commented have had a chance to receive this notice, the rule changes will be filed with the Office of the Code Reviser, and will become effective on January 1, 2005.

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NEW SECTION

**WAC 314-20-001 Definitions. (1) Per RCW 66.04.010(2), an "authorized representative" means a person who:**

(a) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer that is produced anywhere outside Washington by a brewery which does not hold a certificate of approval issued by the board, for transportation into and resale in the state of Washington.

(d) Is appointed by the brewery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States or within Washington State, in accordance with a written agreement between the authorized representative and the brewery. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products.

AMENDATORY SECTION (Amending WSR 04-06-007, filed 2/20/04, effective 3/22/04)

**WAC 314-20-020 Beer labels -- Certificate of label approval required -- Labels to be submitted. (1) Every bottle or can containing beer intended for sale in the state of Washington shall bear a label in compliance with RCW 66.28.120. No beer shall be imported or sold within the state of Washington until the licensed brewery, or certificate of approval holder, shall have obtained from the board a certificate of label approval for such beer.**

(2) A request for certificate of label approval must be submitted on a form prescribed by the board which is one copy of the federal certificate of label approval for such beer, issued by the Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department.

(3) Any change in label or product which requires reissuance of federal certificate of label approval, must also be submitted to the

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board, in accordance with the foregoing provisions of this regulation.

(4) No label shall be used that is misleading.

(5) Every producer, importer, (~~(or)~~) distributor of beer, or beer certificate of approval holder shall, upon request of the board or its authorized representative, furnish without cost to the board, samples of any brand of beer upon its premises for the purpose of analysis in order to determine whether the beer conforms to commercial standards.

(6) No label will be approved which is designed to be especially appealing to children or other persons under legal age to consume. Persons who appear to be under legal age to consume may be depicted on a label when, in the discretion of the board, the depiction is dignified and does not promote illegal consumption of liquor.

(7) For strong beer, the label must contain the beer's alcohol content, stated in terms of percentage of alcohol by volume. Per RCW 66.04.010, strong beer means any malt beverage that contains more than eight percent of alcohol by weight, which is approximately ten percent of alcohol by volume.

AMENDATORY SECTION (Amending WSR 98-07-097, filed 9/2/98, effective 10/3/98)

**WAC 314-20-030 Packages--Classification.** (1) No manufacturer, distributor, (~~(or)~~) importer, or beer certificate of approval holder shall sell beer for use in the state of Washington in any packages or containers differing in sizes and case quantities from the manufacturer's original packages.

(2) Net contents--Packaged beer. Net contents shall be stated in a clearly legible manner on the label in fluid ounces or as follows:

(a) If less than 1 pint, in fluid ounces, or fractions of a pint;

(b) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated;

(c) If more than 1 pint, but less than 1 quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces;

(d) If more than 1 quart, but less than 1 gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces;

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(e) If more than 1 gallon, the net contents shall be stated in gallons and fractions thereof;

(f) The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

(3) Container size limitations--Barrels. Whole barrels (31 gallons), 1/2 barrels (15.5 gallons), 1/4 barrels (7.75 gallons), 1/6 barrels (5.16 gallons). Packaged beer--Maximum capacity for individual containers, 170 fluid ounces: Provided, however, That the board may, in its discretion, authorize other container and/or barrel size packages which have been approved for marketing within the United States by the Bureau of Alcohol, Tobacco, and Firearms, United States Treasury Department: Provided further, That the board may, in its discretion, authorize a brewery with spirit, beer and wine restaurant privileges to dispense beer directly from conditioning tanks/vessels to the spirit, beer and wine restaurant area provided the taxes have been paid prior to dispensing.

(4) The net contents of individual containers shall be stated on the outside of any multicontainer package where the individual container label or bottle size is not visible to the consumer at the point of purchase.

(5) Gift packages. A beer importer or beer wholesaler may prepare and sell "gift packages" consisting of containers of beer differing in case quantities from the manufacturer's original case capacities provided the tax has been paid on the previously purchased beer in accordance with RCW 66.24.290 and provided written approval by the board has been obtained.

AMENDATORY SECTION (Amending Rule 53, filed 6/13/63)

**WAC 314-20-140 Beer importers--Certain duties.** No beer importer shall import or transport or cause to be transported into the state of Washington any brand of beer manufactured within or outside of the United States but outside the state of Washington, unless such importer shall have first filed with the board a notice of his

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intention so to do, and shall have ascertained from the board that the brewer manufacturing such beer, or United States foreign importer of such beer, has obtained from the Washington state liquor control board a certificate of approval as provided in section 23-F of the Washington State Liquor Act (RCW 66.24.270).

#### NEW SECTION

**WAC 314-20-145 Beer Certificate of Approval Fee.** The fee for a beer certificate of approval license is \$200 per year. The certificate of approval holder must pay the \$200 fee for each privilege as described below:

- Manufacturer of beer produced in the United States but outside of Washington State, shipping beer to licensed Washington beer distributors or importers.
- Authorized representative for beer produced in the United States but outside of Washington State, shipping beer to licensed Washington beer distributors or importers.
- Authorized representative for beer produced outside of the United States, shipping beer to licensed Washington beer distributors or importers.

AMENDATORY SECTION (Amending WSR 00-17-065, filed 8/9/00, effective 9/9/00)

**WAC 314-20-170 Holders of certificates of approval.** Each ~~((brewer holding a))~~ beer certificate of approval holder may ship beer only to licensed beer importers or distributors. ~~((f,))~~ As required by RCW 66.24.270 ~~((sec. 23-F of the Washington State Liquor Act))~~ and by the written agreement embodied in the application for certificate of approval, ~~((f,))~~ each brewer holding a certificate of approval shall file the report(s) required by WAC 314-19-015 ~~((f,))~~

All reports shall be made upon forms prescribed ~~((f,))~~ and furnished by the Washington state liquor control board.

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**WAC 314-24-001 Definitions.**

(1) **Per RCW 66.04.010(2), an "authorized representative"** means a person who:

(a) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of wine that is produced anywhere outside Washington by a winery which does not hold a certificate of approval issued by the board, for transportation into and resale in the state of Washington.

(d) Is appointed by the winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States or within Washington State, in accordance with a written agreement between the authorized representative and the winery. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-24-040 Wine labels--Certificate of label approval required--Labels to be submitted.** No wine shall be imported or sold within the state of Washington until the certificate of approval holder, or domestic winery, or United States importer of foreign wine, shall have obtained from the board a certificate of label approval for such wine.

(1) A request for certificate of label approval must be submitted to the board on forms prescribed by the board, together with the following:

(a) ~~((Two))~~ One label~~((s))~~ of the brand and type for which approval is requested for wines under seven percent alcohol by volume; and



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(b) One copy of the federal certificate of label approval for such wine which has been issued by the Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department.

(2) Any change in label or product which requires reissuance of federal approval under the provisions of 27 CFR Part 4, must also be submitted to the board in accordance with the foregoing provisions of this regulation.

(3) Every producer, importer, bottler, ~~((or))~~ distributor, or wine certificate of approval holder ~~((of wine))~~ shall, upon request of the board or its authorized representative, furnish without cost to the board, samples of any brand of wine upon its premises for the purpose of analysis in order to determine whether the wine conforms to the quality standards set by the board in WAC 314-24-060 and conforms with commercial standards.

(4) No label shall be used that is misleading.

(5) No label will be approved which is designed to be especially appealing to children or other persons under legal age to consume. Persons who appear to be under legal age to consume may be depicted on a label when, in the discretion of the board, the depiction is dignified and does not promote illegal consumption of liquor.

#### NEW SECTION

**WAC 314-24-117 Wine Certificate of Approval Fee.** The fee for a wine certificate of approval license is \$200 per year. The certificate of approval holder must pay the \$200 fee for each privilege as described below:

- Manufacturer of wine produced in the United States but outside of Washington State, shipping wine to licensed Washington wine distributors or importers.
- Authorized representative for wine produced in the United States but outside of Washington State, shipping wine to licensed Washington wine distributors or importers.
- Authorized representative for wine produced outside of the United States, shipping wine to licensed Washington wine distributors or importers.

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AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-24-220 Licensing and operation of bonded wine warehouses.** (1) There shall be a license for bonded wine warehouses pursuant to RCW 66.24.185, and this type of license shall be known as a bonded wine warehouse licensee. Applications for a bonded wine warehouse license shall be on forms prescribed by the board and shall be accompanied by such information as the board may request including, but not limited to, a written description of the proposed method of shipping, receiving, inventory control, and security.

(2) The bonded wine warehouse shall be physically separated from any other use in such manner as prescribed by the board, and as a condition of license approval, the applicant must furnish the board appropriate documentation indicating the location of the bonded wine warehouse is properly zoned for the intended use. Wine not under federal excise tax bond shall be identified as federally tax-paid and physically separated on the premises to the extent required under the license holder's federal basic permit.

(3) A bonded wine warehouse may provide storage for a domestic winery and for a certificate of approval holder (~~((United States winery outside the state of Washington holding a Washington certificate of approval))~~). The wine may or may not be under federal bond, and the Washington wine tax provided in RCW 66.24.210 shall not be due until the wine is removed from bond and shipped to a licensed Washington wine distributor or, pursuant to RCW 66.12.020, to the liquor control board who will be responsible to pay the tax based on their purchases.

(4) Every bonded wine warehouse licensee shall have on file and available for inspection records of all wine transactions, including receipts and shipments of wine and the total inventory on hand at the bonded warehouse.

(5) Removals of wine from a bonded wine warehouse may be made only for shipment (a) to a licensed independent Washington wine distributor; (b) to another licensed bonded wine warehouse; (c) to the liquor control board; (d) out of state; (e) for return to the producing winery; or (f) to a producing domestic winery licensee. For

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purposes of this section, "producing domestic winery licensee" means the licensed Washington winery that produced the wine and its licensed agents. For purposes of this section, a "licensed agent" shall be an accredited representative, licensed pursuant to chapter 314-44 WAC, of only one producing domestic winery at the time of removal by such agent. A producing domestic winery licensee may take possession of wine from a bonded wine warehouse, after accepting an order therefor, and deliver the wine to a purchasing retail or special occasion licensee only by transporting the wine directly from the bonded wine warehouse to the licensed premises of the purchasing retail or special occasion licensee; provided, however, that in no event may a producing domestic winery licensee remove, in the aggregate, during any one calendar year, more than two thousand cases of wine for delivery directly to retail and special occasion licensees. Producing domestic winery licensees shall maintain records of removals and deliveries of wine from bonded wine warehouses and shall file with the liquor control board annually reports of the quantity of wine removed and delivered directly to retail and special occasion licensees. Invoicing shall be by the titleholder. The titleholder shall report shipments to, and returns from the bonded wine warehouse and sales to Washington wine distributors, and/or the liquor control board on the twentieth day of the month following the month of shipment and/or sale on forms furnished by, or acceptable to, the board.

(6) At no time shall title to wine stored at the bonded wine warehouse pass to the operator of the bonded wine warehouse.

(7) "Storage of bottled wine only" as used in RCW 66.24.185(1) shall mean the storage of wine packaged for sale at retail (i.e., other than in bulk form).

(8) As a condition precedent to license issuance, a bonded wine warehouse licensee shall guarantee payment to the state of any and all taxes under RCW 66.24.210 in the event the winery or other entity storing wine in the bonded wine warehouse fails to immediately pay such tax when due. Such guarantee shall be in the form of the bond referred to in subsection (9) of this section.

(9) As required by RCW 66.24.185(5) every holder of a bonded wine warehouse license must, at all times when said license is in force,

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have in effect and on file with the board a bond executed by a surety authorized to do business in the state of Washington, in a form approved by the board and in the amount of five thousand dollars.